

117 FERC ¶ 61, 026
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

New York Independent System Operator, Inc.

Docket Nos. ER03-552-012
and ER03-984-010

ORDER ON COMPLIANCE FILING AND REFERRING PROCEEDING TO
DISPUTE RESOLUTION SERVICE

(Issued October 6, 2006)

1. In its order issued on February 22, 2006,¹ the Commission directed the New York Independent System Operator, Inc. (NYISO) to file a timetable for implementation of the Netting Bilaterals Project (Project) within 60 days of the date of issuance of the order (*i.e.*, by April 24, 2006) that included, *inter alia*, specific dates for the completion of the Concept of Operation (COO), and realistic dates for implementation of the Project. In response, on April 24, 2006, NYISO submitted a compliance report.

2. The February 22 Order also directed NYISO to submit (as informational filings) quarterly reports on the current status of the Project, within 15 days of the end of each calendar quarter, beginning with the calendar quarter ending June 30, 2006. In response, on July 17, 2006, NYISO submitted its first such report.

3. As discussed below, in this order the Commission refers these proceedings to the Commission's Dispute Resolution Service (DRS) so that the parties may pursue a consensual resolution of the scope of work and a timetable for implementation of the Project.

Background

4. In its April 24 compliance filing, NYISO defines the Project, describes problems in implementing the Project and offers interim alternatives to the Project. NYISO also includes a discussion and timeline of its ongoing Billing and Accounting System (BAS)

¹ *New York Independent System Operator, Inc.*, 114 FERC ¶ 61,189 (2006) (February 22 Order).

and Market Interface System (MIS) projects, which are projects currently in its project queue that must be completed before the Project can reasonably be implemented. NYISO adds that it discussed the scope and objectives of the project with Strategic Energy L.L.C. (Strategic).²

5. NYISO states that, in light of its discussions with Strategic, it has developed a schedule, whereby it proposes to start work on the COO by the second quarter of 2007, and that it expects the COO to be completed by the end of 2007. NYISO states that this will allow the COO to be developed in parallel with improvements to its BAS and MIS systems. NYISO states that a COO is typically done to determine whether a project will be selected for development and implementation and NYISO cannot give a meaningful estimate as to when the Project will be implemented without one. NYISO states that it will be able to propose a realistic implementation schedule for the Project only after the COO is completed.

6. NYISO states that it currently uses its existing BAS to financially settle all transactions it administers. Specifically, NYISO states that its existing BAS contains three major components: (1) the settlement engine, which contains NYISO's market rules; (2) a web-based reconciliation function, used for uploading and validating metering data; and (3) a mechanism for producing consolidated invoices, which NYISO sends to market participants. NYISO asserts that its existing BAS is already strained to handle current transactions and that a substantial project is already underway to replace all three major components. NYISO projects that the upgrades and improvement to its existing BAS will not be completed until mid-2008.

7. NYISO states that, in order to implement the Project, all three components of its current BAS would require significant modifications. Further, NYISO states that (1) it currently lacks the resources to implement the Project before the new, upgraded BAS infrastructure is completed and (2) even if this were possible, it would be cost ineffective. NYISO recommends that it not be required to separately pursue completion of the Project but, instead, only be required to implement the Project in the course of developing and installing the new BAS infrastructure.

8. NYISO also claims that it cannot easily incorporate new trading mechanisms, such as the Project, without substantial changes to its existing MIS, which market participants use to submit bids and offers that are validated for consistency with existing rules. In its timeline, NYISO estimates that its ongoing MIS replacement project should also be completed by mid-2008.

² Strategic intervened earlier in this proceeding and urged the Commission to push NYISO to move ahead with the Project expeditiously.

9. Finally, NYISO explains that a load serving entity in the New York Control Area can significantly reduce its NYISO collateral requirements by incorporating bilateral transactions into its purchase strategies. NYISO states that, for a load serving entity engaging in bilateral transactions, NYISO imposes a credit requirement only on the transmission usage charge, which is typically about one quarter of the charge that would be collateralized when purchasing energy from the NYISO spot markets. NYISO recognizes that this mechanism does not offer all of the advantages of the Project, but NYISO claims it is an effective strategy and one used by the majority of the load serving entities operating in the NYISO markets. NYISO adds that bilateral transactions account for approximately half of the energy transactions that it administers.

10. Notice of NYISO's April 24, 2006 Compliance Report was published in the *Federal Register*, 71 Fed. Reg. 28,676 (2006), with protests and interventions due on or before May 17, 2006. Timely protests were filed by Strategic³ and by EPIC Merchant Energy LP (EPIC). On June 2, 2006, New York Transmission Owners filed an answer to the protests of Strategic and EPIC.⁴ On June 13, 2006, Strategic filed a further answer.

11. In its protest, Strategic argues that NYISO's proposed implementation schedule for the Project fails to comply with the Commission's directive in the February 22 Order to implement the Project "as soon as possible." Strategic claims that NYISO has not provided a specific date for completion of the COO or an estimate as to when the Project will be implemented. As a result, Strategic states that it and other load serving entities continue to be exposed to excessive credit requirements in New York compared to the credit requirements facing load serving entities doing business in other regions. Strategic states that it has been fighting to correct this situation for over four years, and urges the Commission either to: (1) order NYISO to implement the Project by a date certain (*i.e.*, June 30, 2007); or (2) develop a manual workaround until NYISO completes the necessary computer changes.

12. Strategic argues that the reasons NYISO offers to defend its decision not to implement the Project as soon as possible lack credibility. Strategic states that June 30, 2007, one additional year, would be a reasonable date for Project completion, given that four years have already passed. Strategic states that, otherwise, load serving entities in New York will be burdened by NYISO's current credit requirement for at least two and a

³ Strategic states that its protest is supported by: the Small Customer Marketer Association; Direct Energy Services, LLC; and the U.S. Energy Savings Corp.

⁴ The New York Transmission Owners are: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; LIPA; New York Power Authority; New York State Electric & Gas Corporation; Rochester Gas and Electric Corporation; Orange and Rockland Utilities, Inc.; and Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk).

half more years, and possibly longer, given the open-ended commitment NYISO proposes.

13. In the alternative, Strategic recommends that the Commission order a manual workaround that will allow market participants to net bilateral contracts against their collateral requirements while NYISO completes the necessary system upgrades. Strategic states that the Project is particularly important to those entities whose loads in the NYISO market are not hedged with either generation or internal bilateral contracts, who would be subject to collateral requirements. Strategic also proposes that NYISO should retain the right to discontinue the workaround if it shows the Commission that the workaround results in excessive credit exposure to the NYISO.

14. EPIC supports and adopts Strategic's protest, stating that NYISO failed to comply with the Commission's February 22 Order that required NYISO to provide a timetable for implementation of the Project that includes, *inter alia*, specific dates for completion of the COO, and realistic dates for implementation. EPIC states that NYISO's delay has burdened the market as a whole, has deterred the efficient allocation of risks, and has constrained the menu of liquid market products. EPIC requests that the Commission order NYISO to implement the Project by June 1, 2007.

Discussion

15. As a preliminary matter, Rule 213(a) (2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest or an answer, unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by New York Transmission Owners and Strategic and will, therefore, reject them.

16. The Commission recognizes both the resource limitations expressed by NYISO and the credit requirements experienced by Strategic, EPIC, and others. In order to address the concerns of the parties, the Commission will refer this matter to the Commission's DRS to see if the parties can reach agreement on the scope of work and on a timetable for implementation of the Project. The Commission also encourages the parties to examine the processes used in other regions to address concerns like those raised here.

The Commission orders:

(A) The Commission's DRS is hereby directed to convene a meeting of the parties within 15 days of the date of this order.

Docket Nos. ER03-552-012
and ER03-984-010

-5-

(B) NYISO is hereby directed to file, on behalf of all involved parties, a report on the status of the negotiations being facilitated by the Commission's DRS, within 45 days of the date of issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.